

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1686 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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DAHYABHAI NANJIBHAI

Versus

BABUBHAI DEVJIBHAI  
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Appearance:

MR AK TRIVEDI for Petitioners  
MR KH DAMANI for Respondent No. 1  
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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 16/06/2000

ORAL JUDGEMENT

1. This is a revision application u/s 29[2] of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original landlord who had sued the respondent - tenant for a decree of eviction. The landlord had filed the suit for eviction on the

following grounds :

[i] That the tenant had paid rent only upto 30th June 1976, that he was in arrears of rent for a period of more than six years, and had failed to make payment inspite of statutory notice,

[ii] That the defendant - tenant had acquired vacant possession of the suitable residence and is therefore to be evicted u/s 13[1][1] of the Bombay Rent Act, and

[iii] That the landlord reasonably and bonafide requires the suit premises for his own use.

2. The defendant - tenant filed his written statement at exh.9 and contested the suit on all the grounds.

3. After appreciating the evidence on record, the trial Court decided that the defendant was not a tenant in arrears in respect of any period exceeding six months, and did not decide the issue as regards the reasonable and bonafide requirement of the landlord inasmuch as this question was not pressed by the plaintiff - landlord. However, the trial Court found that the landlord had succeeded in proving that the defendant - tenant had acquired alternate vacant possession of the suitable residence, and therefore, passed a decree for eviction u/s 13[1][1] of the said Act.

4. The tenant therefore preferred an appeal, which was allowed by the lower appellate Court. Hence, the present revision at the instance of the landlord.

5. The only issue arising in the present revision is as to whether the lower appellate Court was justified in coming to the conclusion that the landlord had failed to establish that the tenant had acquired suitable residential accommodation so as to justify a decree for eviction within the meaning of section 13[1][1] of the said Act.

6. It may be stated for the record and for the sake of clarity, that there is no controversy that the tenant had in fact acquired an alternate residential accommodation inasmuch as the tenant was an allottee in respect of unit No.1124 in block No.65, amongst 1134 houses constructed by the Gujarat Housing Board. No doubt this allotment is on an ownership basis, and that defendant - tenant has acquired title to the same. The

controversy however revolves around the fact as to whether this newly acquired property is "suitable" within the meaning of section 13[1][1] of the said Act.

7. At this stage, it must be noted that, in the present revision u/s 29[2] of the Bombay Rent Act, it is not open to this Court to re-appreciate the evidence on record, or in any manner to function as a court of appeal so as to decide whether the findings of fact recorded by the lower appellate Court on the basis of the evidence on record, are justified or not. There cannot be any doubt as to whether the alternate residential accommodation acquired by the tenant is "suitable" or not, is essentially a question of fact. No question of law is involved in the determination of this question. The lower appellate Court has in the impugned judgement dealt with this aspect in considerable detail in paragraph 9 and onwards of the said judgement.

7.1 The lower appellate Court has considered the suitability of the newly acquired residential accommodation, from the point of view of requirement of the tenant, in terms of the area available, the members of the tenant's family who would be participants in that area from the point of view of residence, and the various difficulties which would be faced not only by the tenant himself but the difficulties that would be faced by the individual members of the tenant's family.

8. Even on re-appreciation of the evidence on record, I see no reason to take a view different than the one taken by the lower appellate Court. The impugned judgement and order passed by the lower appellate Court is therefore required to be confirmed, and the present revision requires to be dismissed. Accordingly, this revision is dismissed and rule is discharged with no orders as to costs.

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